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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,710	10/29/2003	Lung T. Tran	10017427-1	5581
22879	7590	12/14/2005	EXAMINER HO, TU TU V	
HEWLETT PACKARD COMPANY P O BOX 272400, 3404 E. HARMONY ROAD INTELLECTUAL PROPERTY ADMINISTRATION FORT COLLINS, CO 80527-2400			ART UNIT 2818	PAPER NUMBER

DATE MAILED: 12/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/695,710	TRAN ET AL. 
	Examiner	Art Unit
	Tu-Tu Ho	2818

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 30 November 2005.
2a) This action is **FINAL**. 2b) This action is non-final.
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 17-33 is/are pending in the application.
4a) Of the above claim(s) 24-28 is/are withdrawn from consideration.
5) Claim(s) _____ is/are allowed.
6) Claim(s) _____ is/are rejected.
7) Claim(s) _____ is/are objected to.
8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 20 July 2005 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ .
4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ .
5) Notice of Informal Patent Application (PTO-152)
6) Other: _____ .

DETAILED ACTION

Formal Matters

1. This application is in condition for allowance except for the following formal matters:

This application is in condition for allowance except for the presence of claims 24-28 to a non-elected invention. Specifically, new claims 24-28 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

The device of the invention originally claimed does not include at least “a non-conductive barrier layer disposed between the silicon layer and the top conductor” and “the silicon layer and the barrier layer each comprises a non-uniform surface” as required by independent claim 24. Accordingly, new claims 24-28 are directed to an invention that is independent or distinct from the invention originally claimed.

Since applicant has received an action on the merits for the originally presented invention, the originally presented invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, new claims 24-28 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

(Furthermore, at least independent claim 24 of the withdrawn non-elected new claims 24-28 is clearly anticipated by Cutter et al. U.S. Patent 6,154,410, cited by Applicant on 11/30/2005 together with the new claims. Cutter teaches:

a memory element comprising:

a top conductor (upper polysilicon layer 24, Fig. 1, paragraph bridging columns 2 and 3);

a bottom conductor (14; or 14/20);
a silicon layer (silicon 20/22; or 22) disposed between the top conductor and the bottom conductor; and
a non-conductive barrier layer (dielectric layer 26) disposed between the silicon layer and the top conductor, the barrier layer being in contact with the silicon layer;
wherein the silicon layer and the barrier layer each comprises a non-uniform surface (as clearly depicted in the figure.))

Allowable Subject Matter

2. The following is a statement of reasons for the indication of allowable subject matter:
The prior art of record fails to teach or render obvious a memory element with all exclusive limitations as recited in claims 17 and 29, comprising a top conductor, a bottom conductor, an isolator element disposed between the top conductor and the bottom conductor, a non-conductive barrier layer disposed between the isolator element and the bottom conductor, the barrier layer being in contact with the bottom conductor, the bottom conductor and the barrier layer each comprising a non-uniform surface, and the isolator element being formed either of a high-resistance conductor or as a p-n diode junction.

As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

Conclusion

3. Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tu-Tu Ho whose telephone number is (571) 272-1778. The examiner can normally be reached on 6:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, DAVID NELMS can be reached on (571) 272-1787. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tu-Tu Ho
December 09, 2005